

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**
10

11 SA MUSIC, LLC, WILLIAM KOLBERT,
12 AS TRUSTEE OF THE HAROLD ARLEN
13 TRUST, RAY HENDERSON MUSIC CO.
INC., FOUR JAY MUSIC COMPANY, and
JULIA RIVA,

14 Plaintiffs,

15 v.

16 AMAZON.COM, INC.,
17 AMAZON.COM SERVICES LLC,
18 PICKWICK INTERNATIONAL LIMITED,
PICKWICK GROUP LIMITED,
19 PICKWICK AUSTRALIA PTY LTD., and
MASTERCORP PTY. LTD.,

20 Defendants.
21

**COMPLAINT FOR
COPYRIGHT
INFRINGEMENT
JURY DEMAND**

22 **Basis for Jurisdiction**

23 1. The Court has jurisdiction over the subject matter of this action against
24 all Defendants pursuant to 28 U.S.C. § 1338(a) because this is an action for copyright
25 infringement arising under the Copyright Act of 1976, 17 U.S.C. §§ 101, 106, 115,
26 501, 602 *et seq.*
27
28

Introduction

2. Plaintiffs are the legal and/or beneficial copyright owners of musical works authored by Harold Arlen one of the premier composers of American music.

3. Harold Arlen wrote or co-wrote some of the most popular modern songs, including *Over the Rainbow* from *The Wizard of Oz* and many other seminal works in the American songbook, including *I've Got the World on a String*, *Stormy Weather*, *The Devil and the Deep Blue Sea*, *Come Rain or Come Shine*, *Get Happy*, *Ill Wind* and *It's Only A Paper Moon*.

4. Ray Henderson wrote or co-wrote some of the most popular modern songs, including many seminal works in the American songbook, including *Bye Bye Blackbird*, *Has Anybody Seen My Girl?* (a/k/a "*Five Foot Two, Eyes of Blue*"), *I'm Sitting on Top of the World*, *Life Is Just a Bowl of Cherries*, *Varsity Drag*, *The Best Things in Life Are Free*, *Button Up Your Overcoat* and *Animal Crackers in My Soup*.

5. Harry Warren wrote over 800 songs, including *At Last*, *Chattanooga Choo Choo*, *I Only Have Eyes for You*, *You Must Have Been a Beautiful Baby*, *Jeepers Creepers*, *The Gold Diggers' Song (We're in the Money)*, *Lullaby of Broadway*, *You'll Never Know*, *On the Atchison, Topeka and the Santa Fe*, *That's Amore*, *Nagasaki*, *There Will Never Be Another You*, and *The More I See You*.

6. The Composition Chart annexed as Exhibit A provides a list of Plaintiffs' copyrighted compositions at issue in this case (the "Subject Compositions").

7. The works of Arlen have been recorded by the most prominent jazz and popular artists of all time, including Art Tatum, Art Blakey, Benny Goodman, Billie Holliday, Buddy Rich, Cab Calloway, Charlie Parker, Coleman Hawkins, Count Basie, Dean Martin, Dizzy Gillespie, Duke Ellington, Ella Fitzgerald, Etta James, Frank Sinatra, Fred Astaire, John Coltrane, Judy Garland, Lena Horne, Louis Armstrong, Miles Davis, Quincy Jones, Ray Charles, and Sarah Vaughan to name only a few. These monumental works of art are, quite literally, national treasures.

1 8. These and other recordings of Plaintiffs' copyrighted musical works
2 have been pirated by the Defendants in this case. Defendants are all players in the
3 digital music business that participate in, and jointly profit from, making digital
4 phonorecord deliveries (*i.e.*, downloads) of pirated recordings of the Subject
5 Compositions.

6 9. Digital phonorecord deliveries of musical recordings constitute a
7 reproduction and distribution of the musical work embodied in the digital recording
8 and require a license from the copyright owner of the musical composition, sometimes
9 referred to as a "mechanical license."

10 10. Defendants have failed to obtain any license that would authorize them
11 to reproduce, distribute, or sell the recordings of the Subject Compositions identified
12 on Exhibits B-D and, as a result, Defendants have infringed Plaintiffs' exclusive rights
13 of reproduction and distribution of the Subject Compositions, under 17 U.S.C. §§
14 106(1) and 106(3).

15 11. Further, the activity of making digital phonorecord deliveries of pirated
16 recordings of the Subject Compositions does not qualify for a compulsory license or
17 as a covered activity under Section 115 of the Copyright Act.

18 12. A list of the pirated recordings of the Subject Compositions that
19 Defendants have reproduced and distributed without authorization, including by
20 making digital phonorecord deliveries, thus far identified, is set forth in the
21 Infringement Chart annexed as Exhibits B-D.

22 13. All the recordings identified on Exhibits B-D are pirated. Plaintiffs have
23 thus far identified over 1,000 pirated recordings of the Subject Compositions that have
24 been separately reproduced and distributed as digital phonorecord deliveries by
25 Defendants in the Amazon digital music store as set forth in the Infringement Chart
26 annexed as Exhibits B-D. Defendants have infringed these works in a concerted and
27 distinct distribution chain.

Defendants' Piracy is Massive and Flagrant

14. The Amazon music store sold pirated recordings, provided by Pickwick, of virtually every well-known recording artist from the 1930s through the 1960s, including Frank Sinatra, Ella Fitzgerald, Miles Davis, Louis Armstrong, Billie Holiday, Mel Tormé, Ray Charles, Lena Horne, and Judy Garland.

15. The scope and flagrant nature of Defendants' piracy cannot be understated. It is obvious that the recordings listed in Exhibits B-D are pirated by virtue of the scope of the Pickwick catalog and the replication of the original album artwork while removing the original label logos.

16. Album cover art has been an essential part of the packaging and marketing and labels have taken great care to create album artwork commensurate with the music it accompanied. Not so with Pickwick, which steals the album art and music wholesale for its bootlegged albums. For example, the Pickwick album art in the following releases is copied wholesale from the original releases, except for the removal of the logo of the issuing record label:



Columbia Release



Vogue Release



RCA Release



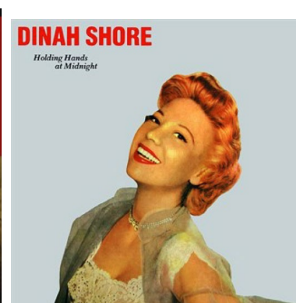
Decca Release



Pickwick



Pickwick



Pickwick



Pickwick

17. In many instances, the Amazon music store is selling the legitimate release by the original label side by side with Pickwick's bootlegged copy. For example, in 1958 Lion Records released Lena Horne's album, I Feel Smoochie, which included her acclaimed version of *Come Rain Or Come Shine*:



Lion Records 1958



Cool Note

18. The Genius of Art Tatum is a 1953-54 series of solo albums by jazz pianist Art Tatum. First released on the Clef Records label, they were added to the Grammy Hall of Fame in 1978. In fact, the "Clef" label name hidden in the fold of Tatum's coat on his right arm (circled) and was copied on the Pickwick pirated copy:



Clef Records (1954)



Cool Note (2011)

19. Rosemary Clooney's 1960 studio album, Clap Hands! Here Comes Rose! received a Grammy nomination for album of the year. The album features Ray Henderson's classic *Bye Bye Blackbird* and Harold Arlen's *Hooray For Love*:

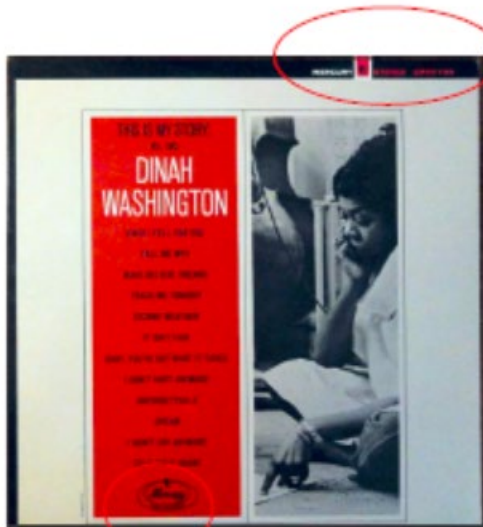


RCA (1960)

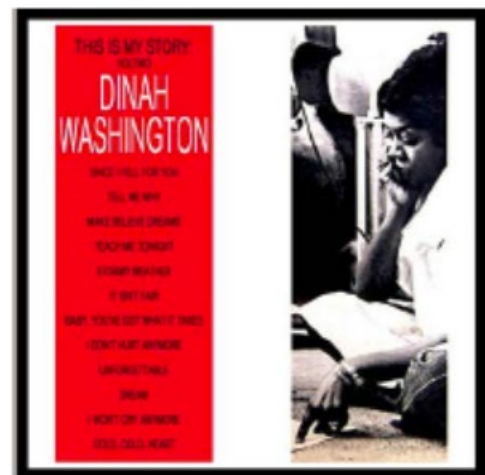


Cool Note (2011)

20. Dinah Washington's album, This Is My Story was released by Mercury in 1963 and features an orchestra conducted by Quincy Jones and an outstanding performance of Arlen's *Stormy Weather*:

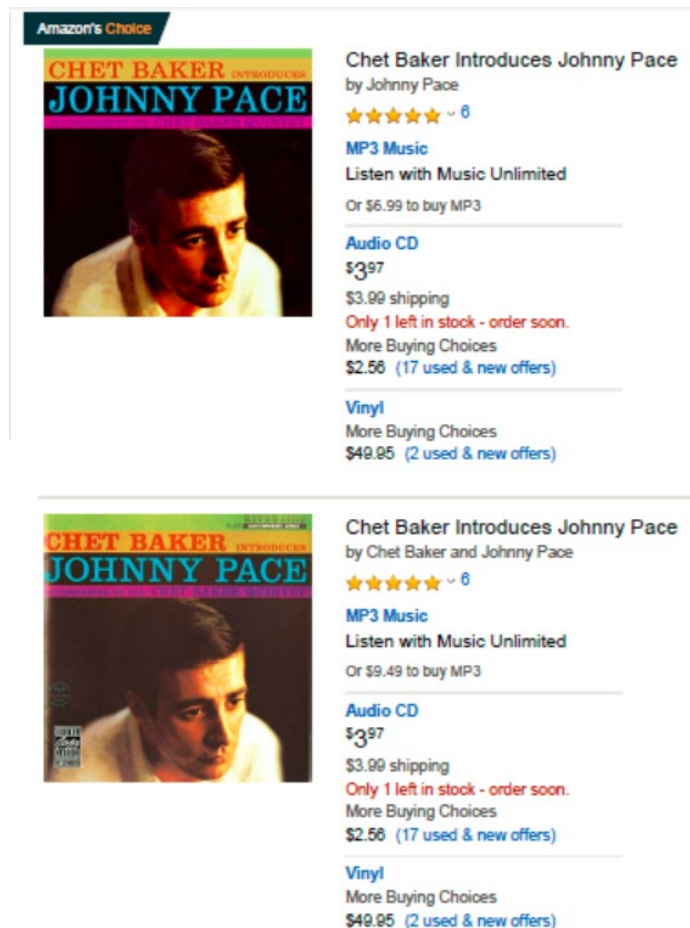


Mercury 1963 Album



Pirated Copy for sale on Amazon – P&R (2011)

21. Similarly, in 1959, Riverside released the album Chet Baker Introduces Johnny Pace, featuring trumpeter Chet Baker and vocalist Johnny Pace, which included the Harry Warren standard, *This Is Always*, and the Harold Arlen, masterpiece, *When the Sun Comes Out*. The legitimate release is sold on Amazon in for \$9.99 direct competition with the pirated Pickwick release, which Defendants offer, deeply discounted, for \$6.99. Defendants' pirated copy is further promoted as "Amazon's Choice." In addition, Defendants have appropriated album artwork (eliminating the Riverside logo) as evidenced by the following the Amazon screenshot:



https://www.amazon.com/s?k=chet+baker+introduces+johnny+pace&i=digital-music&ref=nb_sb_noss

1 22. All of this should have made it obvious that Pickwick is operating a huge
2 music piracy operation. Amazon had actual knowledge of, and/or willfully chose to
3 ignore, the evidence of piracy and participated in the infringement on a massive scale.

4 23. To put this case in context, in 2007, Jammie Thomas-Rasset, a single
5 mother of four in Brainerd, Minnesota, was found liable, after three separate jury
6 trials, for copyright infringement for using file sharing software that enabled the
7 unauthorized downloading and distribution of 24 recordings by the Goo Goo Dolls
8 and Def Leppard, among others. The juries awarded statutory damages in all three
9 trials of up to \$80,000 per infringement. The Eighth Circuit Court of Appeals
10 ultimately affirmed statutory damages in the amount of \$9,250 for each infringed
11 recording, for a total award of \$222,000. Ms. Thomas-Rasset declared bankruptcy as
12 she had “no other option.”

13 24. In 2009, Joel Tenenbaum, a Massachusetts college student, who also
14 used file-sharing software that permitted others to download 30 recordings by Limp
15 Bizkit and Blink-182, was found liable and the jury awarded statutory damages of
16 \$22,500 per recording, for a judgment that totaled \$675,000 forcing Mr. Tenenbaum
17 to file for Chapter 7 bankruptcy.

18 25. Unlike Ms. Thomas-Rasset and Mr. Tenenbaum who were not alleged
19 to have sold their infringing recordings or profited from their conduct, Defendants in
20 this case have engaged in massive music piracy operation for the purpose of
21 generating profits from their sales of pirated recordings and by other means.

22 26. The copyright infringement operation detailed in this Complaint is only
23 the latest in a long line of piracy schemes that have plagued composers, publishers,
24 and record labels since the inception of the music industry over 100 years ago, when
25 the perforated rolls used by player pianos to perform musical works were pirated. See
26 *Aeolian Co. v. Royal Music Co.*, 196 F. 926 (W.D.N.Y. 1912).

1 27. As the technology employed by the music industry to reproduce musical
 2 works advanced, bootlegging efforts by music pirates kept pace. In the 1960s and
 3 1970s, organized criminal enterprises engaged in record and tape piracy operations
 4 on a scale that is dwarfed by the infringing conduct explained herein. Like the
 5 Defendants in this case, the “tape pirates” and “record pirates” of years past
 6 unlawfully duplicated popular pre-existing recordings, and then claimed their liability
 7 was limited by the compulsory license provision of the 1909 Copyright Act, § 1(e).

8 28. The landmark case *Duchess Music Corp. v. Stern*, 458 F.2d 1305 (9th Cir.
 9 1972) settled the issue as to whether tape pirates could limit their liability for piracy
 10 under the compulsory license provision of the 1909 Copyright Act. In *Duchess*, the
 11 defendant tape pirate engaged in the same conduct identified in this Complaint, and
 12 claimed her conduct was lawful because the compulsory license provision of the
 13 Copyright Act authorized the reproduction and distribution of the musical works
 14 embodied on the recordings she pirated. The Ninth Circuit rejected the argument,
 15 stating, “She may not continue her piracy under the flag of compulsory licensing.”
 16 The *Duchess* court concluded that the tape pirates’ activity was ineligible for a
 17 compulsory license and that reproduction of a musical composition on a pirated
 18 recording infringed the copyright in the composition, even when a compulsory license
 19 was claimed.¹

20 29. The holding in *Duchess* was codified when the Copyright Act was
 21 revised in 1976. The statutory bar against compulsory licensing of pirated recordings
 22 continues in the recent amendments to Section 115 of the Copyright Act, which
 23

24 ¹ The criminal conduct of “tape pirates” became a priority of the Attorney General of the
 25 United States, Edward H. Levi, in 1975 when the Justice Department determined that decisions
 26 reached by four Circuit Courts of Appeals, including the Ninth Circuit in *Duchess*, rendered tape
 27 pirates criminally liable even where the statutory royalty was tendered. See *Heilman v. Levi*, 391
 28 F.Supp. 1106 (E.D.Wisc. 1975). Criminal copyright infringement sentences continue to this day.
 See *Matter of Zaragoza-Vaquero*, 26 I&N Dec. 814 (BIA 2016)(defendant sentenced to 33 months
 in prison and ordered to be removed from the United States for selling bootleg copies of music
 CDs at a Florida flea market, as a crime involving moral turpitude).

1 provides that reproduction and distribution of pirated sound recordings is not a
2 covered activity under Section 115 and is ineligible for a compulsory license.

3 30. Defendants are nothing more than modern tape pirates and their conduct
4 constitutes willful copyright infringement of the Subject Compositions in violation of
5 the United States Copyright Act [17 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*] (the
6 “Copyright Act”).

7 ***SA Music, LLC***

8 31. Plaintiff SA Music, LLC is a Nevada limited liability company and Sam
9 Arlen is the sole member of the company.

10 ***The Harold Arlen Trust***

11 32. Plaintiff William Kolbert is the Trustee of the Harold Arlen Trust (the
12 “Harold Arlen Trust”), a trust created by Harold Arlen in his will.

13 ***Ray Henderson Music Co. Inc.***

14 33. Plaintiff Ray Henderson Music Co. Inc. is a Delaware corporation with
15 a principal place of business in Maryland.

16 ***Four Jays Music Company***

17 34. Plaintiff Four Jays Music Company is a California corporation with a
18 principal place of business at 421 E. 6th St. in Los Angeles, California.

19 ***Julia Riva***

20 35. Plaintiff Julia Riva is Harry Warren’s granddaughter and the President
21 of Four Jays Music Company. Julia Riva is a resident of Los Angeles, California.

22 ***Amazon***

23 36. Upon information and belief, Defendant Amazon.com, Inc. is a
24 corporation organized under the laws of the State of Delaware with a place of business
25 at 410 Terry Ave. N Seattle, WA 98109
26
27
28

1 37. Upon information and belief, Amazon Digital Services LLC is a limited
2 liability company organized under the laws of the State of Delaware with a place of
3 business at 410 Terry Avenue N, Seattle, WA 98109.

4 38. Upon information and belief, Defendant Amazon.com Services LLC is
5 a limited liability company organized under the laws of the State of Delaware with a
6 place of business at 410 Terry Avenue N, Seattle, WA 98109.

7 39. On January 1, 2020, Amazon Digital Services LLC was merged into
8 Defendant Amazon.com Services LLC pursuant to and in accordance with Title 6,
9 Section 18-209 of the Limited Liability Company Act of the State of Delaware
10 (“Section 18-209”).

11 40. Under Section 18-209, all liabilities and duties of Amazon Digital
12 Services LLC attached to, and may be enforced against, Defendant Amazon.com
13 Services LLC, as if they had been incurred or contracted by it.

14 41. Amazon.com, Inc., Amazon Digital Services LLC, and Amazon.com
15 Services LLC are united in interest and shall be referred to, individually and
16 collectively, as “Amazon”.

17 42. Amazon has owned and operated a digital music store under various
18 names since 2007, including “Amazon MP3” at launch and currently, “Amazon Music
19 Store” or “Digital Music Store” that sells permanent downloads. Amazon currently
20 offers a catalog of over 40 million tracks for sale as permanent downloads in the U.S.

21 43. Amazon specifically selected and contracted with Pickwick (directly
22 and/or through its distributor) to provide the Pickwick digital music catalog to be sold
23 through the Amazon music store on negotiated financial terms.

24 44. Amazon received all the recordings of the Subject Compositions
25 identified on Exhibits B-D from Pickwick (directly and/or through its distributor).
26 Amazon then reproduced, distributed and sold these pirated recordings of the Subject
27 Compositions in the Amazon music store, without any license whatsoever, as
28

1 permanent downloads among other types of digital phonorecord deliveries identified
2 herein.

3 *Pickwick*

4 45. Upon information and belief, Defendant Pickwick Group Limited is a
5 business entity organized under the laws of the United Kingdom with a place of
6 business at Suite 1, Second Floor - Merritt House, Hill Avenue, Buckinghamshire,
7 UK.

8 46. Upon information and belief, Defendant Pickwick International Limited
9 is a business entity organized under the laws of the United Kingdom with a place of
10 business at Suite 1, Second Floor - Merritt House, Hill Avenue, Buckinghamshire,
11 UK.

12 47. Upon information and belief, Defendant Pickwick Australia Pty Ltd is a
13 business entity organized under the laws of Australia with a principal place of
14 business at 35 Gosford Street, Mount Gravatt QLD 4122.

15 48. Upon information and belief, Defendant Mastercorp Pty. Ltd. is a
16 business entity organized under the laws of Australia with a principal place of
17 business at 35 Gosford Street, Mount Gravatt QLD 4122.

18 49. Defendants Pickwick Group Limited, Pickwick International Limited,
19 Pickwick Australia Pty Ltd, and Mastercorp Pty. Ltd. are united in interest and shall
20 be referred to, individually and collectively, as “Pickwick”.

21 50. Upon information and belief, Pickwick, without any authority,
22 duplicated pre-existing recordings embodying the Subject Compositions identified
23 on Exhibits B-D, distributed them to Amazon for sale in their digital music stores
24 without any license, and unlawfully authorized Amazon’s making of digital
25 phonorecord deliveries in their music store as specifically set forth in the annexed
26 Exhibit B-D.

62. Arlen successfully collaborated with the greatest Tin Pan Alley lyricists, including “Yip” Harburg, Ira Gershwin, Johnny Mercer, Leo Robin and Ted Koehler.

63. Arlen’s partnership with Harburg extended over many decades. With Billy Rose, they wrote *It's Only A Paper Moon* in 1933. They followed up with a successful revue, *Life Begins at 8:40*, which included lyric collaborations with his old friend, Ira Gershwin, including *Fun to Be Fooled*, *You're A Builder Upper*, and *Let's Take A Walk Around The Block*.

64. Arlen was inducted into the Songwriters Hall of Fame in 1971 and was honored with its highest accolade, the Johnny Mercer Award, in 1982. In 1996, Arlen was honored and memorialized by the U.S. Postal Service with his own stamp:



SA Music LLC and the Harold Arlen Trust

65. Harold Arlen’s son, Sam Arlen, acquired the U.S. copyrights in the Subject Compositions between 1989 and 2015, by termination notices that he, as sole statutory heir under Section 304 of the Copyright Act of 1976, served and filed with Copyright Office.

66. In 2018, Sam Arlen assigned the U.S. copyrights in the Subject Compositions, as set forth in the Composition Chart annexed as Exhibit A, along with all accrued causes of action, to his company, SA Music, LLC. SA Music, LLC is the

1 legal and/or beneficial owner of the U.S. copyright in certain of the Subject
2 Compositions as identified in Exhibit A, along with all accrued causes of action.

3 67. Plaintiff Harold Arlen Trust acquired the U.S. copyrights identified in
4 the Composition Chart annexed as Exhibit A by operation of will and through
5 termination notices served and filed by Harold Arlen during his lifetime with the U.S.
6 Copyright Office under Section 304 of the Copyright Act of 1976.

7 68. Plaintiff Harold Arlen Trust is the legal owner of certain of the U.S.
8 copyright in certain of the Subject Compositions as identified in Exhibit A, along with
9 all accrued causes of action.

10 Ray Henderson

11 69. Ray Henderson (1896-1970) was born in Buffalo, New York and studied
12 piano and composition at the Chicago Conservatory where he cultivated a melodic
13 style that helped him write enduring American standards, such as *Life Is Just A Bowl*
14 *of Cherries*, *Bye Bye Blackbird*, and *Five Foot Two Eyes Of Blue*.

15 70. Henderson was part of the most successful songwriting team of the late
16 1920s and 1930s, Henderson, Brown and DeSylva. The threesome created several
17 memorable hits from the era including *It All Depends On You*, *Broken Hearted*, and
18 *If I Had A Talking Picture of You*.



26 71. Henderson contributed to several Broadway shows throughout his career
27 including *Manhattan Mary*, *George White's Scandals*, *Good News*, *Hold Everything*,
28

1 Three Cheers, Follow Through, Flying High, Hot-Cha, Strike Me Pink, Ziegfeld
2 Follies of 1943 and Say When. In 1956, Henderson's songwriting life was the subject
3 of a film called "The Best Things In Life Are Free" starring Gordon MacRae, Dan
4 Dailey and Ernest Borgnine as the real-life songwriting team of Buddy DeSylva, Lew
5 Brown and Ray Henderson.

6 72. Ray Henderson was among those selected for the inaugural induction
7 into the Songwriters Hall of Fame in 1970.

8 **Ray Henderson Music Co. Inc.**

9 73. Ray Henderson Music Co. Inc. is a Delaware corporation formed by Ray
10 Henderson's children. Ray Henderson Music Co. Inc. acquired the copyrights in the
11 respective Subject Compositions by assignment from his children who acquired the
12 copyrights by termination notices timely served and filed with U.S. Copyright Office
13 under Section 304 of the Copyright Act of 1976.

14 74. Plaintiff Ray Henderson Music Co. Inc. is the legal owner of the U.S.
15 copyright in certain of the Subject Compositions as identified in Exhibit A, along with
16 all causes of action.

17 **Harry Warren**

18 75. Harry Warren (1893-1981) has perhaps contributed more to the great
19 American songbook than any other songwriter in history. Warren was born to Italian
20 immigrant parents in Brooklyn, New York. After serving in the US Navy in World
21 War I, Warren began writing songs.

22 76. In the years 1931 to 1945, Warren wrote more hit songs than Irving
23 Berlin. He was nominated for the Academy Award for Best Song eleven times (more
24 than Berlin, George Gershwin, Cole Porter or Richard Rodgers) and won three Oscars
25 for composing *Lullaby of Broadway*, *You'll Never Know*, and *On the Atchison, Topeka*
26 *and the Santa Fe*.

1 77. Warren wrote over 800 songs including *Chattanooga Choo Choo*, the
2 first song to receive a gold record, presented by RCA Victor in 1942, for sales of 1.2
3 million copies. Over the course of his career, Warren wrote 81 top 10 hits, including
4 timeless classics such as *At Last*, *I Only Have Eyes For You*, *That's Amore*, *You Must*
5 *Have Been A Beautiful Baby*, *Jeepers Creepers*, and *The Gold Diggers' Song (We're*
6 *in the Money)*.



14

15 78. Warren was one of America's most prolific film composers, and his
16 songs have been featured in over 300 films. Harry Warren was inducted into the
17 Songwriters Hall of Fame in 1971.

18 **Four Jays Music Company & Julia Riva**

19 79. In 1955 Harry Warren formed the Four Jays Music Company, a
20 California corporation, to own the copyrights in his musical works.

21 80. Four Jays Music Company acquired the copyrights in the respective
22 Subject Compositions by assignment from Harry Warren and third party music
23 publishers, as well as by assignment by Harry Warren's wife, daughter, and
24 grandchildren, who acquired the copyrights by termination notices timely served and
25 filed with U.S. Copyright Office under Section 304 of the Copyright Act of 1976.

26 81. Plaintiff Four Jays Music Company is a legal owner of the U.S. copyright
27 in certain of the Subject Compositions as identified in Exhibit A, along with all
28 accrued causes of action.

1 82. Julia Riva is a legal owner of the U.S. copyright in certain of the Subject
2 Compositions as identified in Exhibit A, along with all accrued causes of action, as a
3 result of termination notices filed and served on or after January 1, 1997.

4 **The Subject Compositions**

5 83. Plaintiffs are the owners of the musical compositions listed in the
6 Composition Chart annexed as Exhibit A (collectively, the “Subject Compositions”)
7 that are the subject of this action.

8 84. The copyrights for all the Subject Compositions have been registered and
9 renewed with the U.S. Copyright Office, and each Subject Composition is the subject
10 of a valid U.S. copyright. The Composition Chart annexed as Exhibit A identifies the
11 copyright registration numbers for each of the Subject Compositions.

12 85. Plaintiffs are the owner of a share in each of the Subject Compositions
13 in the percentages listed on Exhibit A.

14 86. As discussed more fully below, the Defendants have infringed, and are
15 continuing to infringe, the copyright in each of the Subject Compositions by willfully
16 reproducing and distributing them without a license.

17 **Background**

18 87. Before digital music distribution, recorded music was physically
19 distributed through brick-and-mortar stores that were confined by the limitations of
20 shelf space. Recording artists signed exclusive recording contracts with record labels
21 in order to have their records pressed and distributed in national record stores.

22 88. It is hard to imagine that a person walking into Tower Records, off the
23 street, with arms full of CDs and vinyl records and claiming to be the record label for
24 Frank Sinatra, Louis Armstrong and Ella Fitzgerald, could succeed in having that
25 store sell their pirated copies directly next to the same albums released by legendary
26 record labels, Capitol, RCA and Columbia, and at a lower price.

1 89. Yet, this exact practice occurs every day in the digital music business,
2 where there is unlimited digital shelf space (for example, there are more than 50
3 million recordings in the Amazon music store) and a complete willingness by the
4 digital music stores like Amazon to seek popular and iconic recordings from any
5 source, legitimate or not, provided they participate in sharing the proceeds.

6 90. The iconic status of the pirated recordings of the Subject Compositions
7 at issue in this case cannot be overstated. Any list of the most popular singers and
8 musicians of any period between 1930 and 1970 would be replete with the artists who
9 have recorded Plaintiffs' musical works, some of them multiple times.

10 91. All the recordings on the Infringement Chart (Exhs. B-D) embodying the
11 Subject Compositions are pirated copies, or "bootlegs." Defendants' digital
12 phonorecord deliveries of these pirated copies were all made without authorization
13 from the copyright owners of the sound recordings or those who originally "fixed"
14 them as required by Section 115 (discussed below), and the copyright owners of the
15 Subject Compositions.

16 92. Defendants all generate illicit revenue for themselves when these and
17 other pirated copies are sold or distributed.

18 **The Pirated Recordings**

19 93. All the recordings identified in Exhibits B-D are pirated. Defendants
20 have taken recordings of the Subject Compositions – in which they hold no rights –
21 and reproduced and distributed pirated copies of them to the public, for profit, without
22 authorization.

23 94. Virtually all the recordings at issue in this case were originally made
24 between 1930 and 1972.

25 95. Since Pickwick did not originally "fix" any of the relevant recordings,
26 the only way for it to acquire the rights to duplicate and distribute them would be to
27 purchase or license rights in these recordings.

1 96. Upon information and belief, Pickwick never acquired permission or the
2 rights to reproduce or distribute any of these recordings from any person who lawfully
3 fixed them or from the owner of the copyright in the sound recording. Pickwick is
4 simply taking previously released recordings and selling them as if they were the
5 rightful owner. Amazon is duplicating Pickwick's pirated sound recordings of the
6 Subject Compositions and selling the pirated copies for profit.

7 **Defendants Have Infringed the Subject Compositions**

8 97. The Infringement Chart annexed as Exhibits B-D sets forth (1) each
9 pirated recording of the Subject Compositions within the Pickwick-Amazon
10 distribution chain thus far identified by Plaintiffs that these

11 98. Each of the recordings identified in the Infringement Chart annexed as
12 Exhibits B-D embodies at least one of the Subject Compositions.

13 99. Defendants have reproduced, distributed, imported, and/or made the
14 recordings identified on Exhibits B-D available for digital phonorecord deliveries
15 through Amazon's digital music.

16 100. Plaintiffs have not authorized any reproduction or distribution or
17 importation of the recordings of the Subject Compositions identified on Exhibits B-
18 D.

19 101. The various types of unauthorized reproductions, distributions, and/or
20 digital phonorecord delivery configurations of each of the pirated recordings of the
21 Subject Compositions made and/or authorized by Defendants are discussed briefly
22 below.

23 ***Permanent Downloads***

24 102. Permanent download means a digital transmission of a sound recording
25 of a musical work in the form of a download, where such sound recording is accessible
26 for listening without restriction as to the amount of time or number of times it may be
27 accessed.

1 103. Amazon has made available, reproduced, and distributed permanent
2 downloads of the recordings of the Subject Compositions listed on Exhibits B-D to
3 its customers.

4 104. Amazon was unlawfully authorized and directed to do so by Pickwick
5 (directly and/or by its distributor).

6 105. Reproducing or distributing permanent downloads of recordings of the
7 Subject Compositions require licenses from the copyright owners of the Subject
8 Compositions and all the Defendants failed to obtain such licenses for each entry on
9 the Infringement Chart at Exhibits B-D.

10 106. The reproduction and distribution of permanent downloads of
11 recordings of the Subject Compositions by Amazon, and the authorization of this
12 activity by Pickwick, infringes Plaintiffs' exclusive reproduction and distribution
13 rights under 17 U.S.C. § 106(1) and (3).

14 ***Promotional Clips***

15 107. Defendant Amazon has a feature in its online music store that allows
16 users to interactive stream a sample, promotional clip, of the recordings that were
17 available for sale as permanent downloads.

18 108. Promotional clips are 30–90 seconds long and their purpose was to
19 encourage the purchase of the tracks as permanent downloads.

20 109. Amazon has distributed copies of the recordings of the Subject
21 Compositions in the recordings identified on Exhibits B-D as promotional clips in its
22 online music store.

23 110. Amazon was unlawfully authorized and directed to do so by Pickwick
24 (directly and/or by its distributor).

25 111. These promotional clips of recordings of the Subject Compositions are
26 interactive streams that require a license from the copyright owners of the Subject
27
28

1 Compositions and Defendants all failed to obtain such licenses for each entry on the
2 Infringement Chart annexed as Exhibits B-D.

3 112. Defendants Amazon's reproduction and distribution of promotional clips
4 of pirated recordings of the Subject Compositions, and authorization of this activity
5 by Pickwick, infringes Plaintiffs' exclusive reproduction and distribution rights under
6 17 U.S.C. § 106(1) and (3).

7 *Server Copies*

8 113. Pickwick has, directly and/or through a distributor, delivered to Amazon
9 a copy of each recording of the Subject Compositions identified on Exhibits B-D.

10 114. Amazon has reproduced at least one copy of each recording of the
11 Subject Compositions identified on Exhibits B-D on its servers.

12 115. Amazon has made one copy of each recording of the Subject
13 Compositions identified on Exhibits B-D available for sale as permanent downloads
14 through its online music store.

15 116. Amazon was unlawfully authorized and directed to do so by Pickwick
16 (directly and/or by its distributor).

17 117. Making server copies of any of the recordings embodying the Subject
18 Compositions identified on Exhibits B-D requires a license from the copyright owners
19 of the Subject Compositions.

20 118. Defendants failed to obtain such licenses for each of the recordings
21 embodying the Subject Compositions identified on Exhibits B-D.

22 119. Amazon's reproduction of server copies of pirated recordings of the
23 Subject Compositions for sale of permanent downloads through their music stores,
24 and authorization of this activity by Pickwick, as well the distribution of the server
25 copies of pirated recordings of Subject Composition to Amazon, by Pickwick,
26 infringes Plaintiffs' exclusive reproduction and distribution rights under 17 U.S.C. §
27 106(1) and (3).

Making Available

120. Defendants have made and continue to make available, or authorize making available, permanent downloads of the recordings of the Subject Compositions identified on Exhibits B-D to the public by delivering, uploading and/or offering them as permanent downloads through the Amazon music store.

121. The Defendants' making available recordings of the Subject Compositions identified on Exhibits B-D for permanent downloads, and authorization of this activity, by Pickwick, requires a license from the copyright owners of the Subject Compositions

122. Amazon has made one copy of each recording of the Subject Compositions identified on Exhibits B-D available for sale as permanent downloads through its online music store.

123. Amazon was unlawfully authorized and directed to do so by Pickwick (directly and/or by its distributor).

124. Defendants failed to obtain such licenses for each recording of the Subject Compositions identified on Exhibits B-D and have thereby infringed Plaintiffs' exclusive distribution rights under 17 U.S.C. § 106(3) as a "deemed distribution." *A&M Records v. Napster*, 239 F.3d 1004, 1014 (9th Cir. 2001); *Perfect 10, Inc. v. Microsoft.com, Inc.*, 487 F.3d 701 718–19 (9th Cir. 2007).

Importation

125. Importation of phonorecords of a musical composition acquired outside the U.S. requires authorization of the owner of the copyright of the musical composition under Section 602 of the Copyright Act. Importation without the authority of the owner of the copyright in that composition is an infringement of the exclusive distribution rights under 17 U.S.C. § 106(3).

1 unlawfully duplicated recordings in their stores that it routinely uses for other
2 services, for example, Amazon's "scan and match" service.

3 133. In addition to the recordings identified on Exhibits B-D, there are
4 believed to be many other pirated recordings of the Subject Compositions that
5 Defendants have reproduced and distributed without authorization that Plaintiffs have
6 not yet identified or that are no longer available on the Amazon music store.

7 134. The infringement by Defendants of each Subject Composition on each
8 pirated recording identified in the Infringement Chart at Exhibits B-D began as of the
9 date of upload, receipt, delivery to and/or reproduction by Amazon of server copies
10 of the pirated recordings of the Subject Compositions designated for reproduction and
11 distribution by Pickwick through the Amazon music store and continues to the
12 present. The infringements identified in Exhibits B-D all occurred within three years
13 of filing this Complaint.

14 135. By their conduct described above, Defendants have infringed and are
15 continuing to infringe Plaintiffs' copyrights on a regular basis in violation of 17
16 U.S.C. §§ 101, 106, 115, 501, 602 *et seq.*

17 136. As a direct and proximate result of Defendants' infringement, Plaintiffs
18 are entitled to elect either an award of actual damages, including Defendants' profits,
19 or statutory damages under 17 U.S.C. § 504(c).

20 137. Defendants' infringement is and has been willful, intentional, purposeful
21 and with willful disregard of the rights of Plaintiffs. Anything less than maximum
22 statutory damage awards would encourage infringement, amount to a slap on the
23 wrist, and reward Defendants for their willful infringement on a grand scale.

24 138. Plaintiffs are also entitled to their costs, including reasonable attorneys'
25 fees, pursuant to 17 U.S.C. § 505.

26 139. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent
27 injunction prohibiting Defendants from reproducing, distributing, making available,
28

1 importing and selling the pirated recordings of the Subject Compositions without
2 license or authorization in violation of the Copyright Act.

3 **First Claim for Copyright Infringement by**
4 **SA Music LLC and William Kolbert, as Trustee**
5 **of the Harold Arlen Trust Against**
6 **Pickwick and Amazon**

7 140. Plaintiffs repeat each and every allegation of the Complaint.

8 141. Plaintiffs SA Music LLC and William Kolbert as Trustee of the Harold
9 Harlen Trust claim that Defendants Pickwick and Amazon have unlawfully
10 reproduced, distributed, made available, and imported unauthorized recordings
11 embodying the Subject Compositions including, but not limited to, those identified in
12 Exhibit B by the methods identified herein, and/or have unlawfully directed or
13 authorized this activity.

14 142. Defendants have thereby willfully infringed Plaintiffs' copyrights in the
15 Subject Compositions in violation of the Copyright Act.

16 **Second Claim for Copyright Infringement by**
17 **Ray Henderson Music Co., Inc. Against**
18 **Pickwick and Amazon**

19 143. Plaintiffs repeat each and every allegation of the Complaint.

20 144. Plaintiff Ray Henderson Music Co., Inc. claims that Defendants
21 Pickwick and Amazon have unlawfully reproduced, distributed, made available, and
22 imported unauthorized recordings embodying the Subject Compositions including,
23 but not limited to, those identified in Exhibit C by the methods identified herein,
24 and/or have unlawfully directed or authorized this activity.

25 145. Defendants have thereby willfully infringed Plaintiff's copyrights in the
26 Subject Compositions in violation of the Copyright Act.
27
28

**Third Claim for Copyright Infringement by
Four Jays Music Company and Julia Riva Against
Pickwick and Amazon**

146. Plaintiffs repeat each and every allegation of the Complaint.

147. Plaintiffs Four Jays Music Company and Julia Riva claim that Defendants Pickwick and Amazon have unlawfully reproduced, distributed, made available and imported unauthorized recordings embodying the Subject Compositions including, but not limited to, those identified in Exhibit D by the methods identified herein, and/or have unlawfully directed or authorized this activity.

148. Defendants have thereby willfully infringed Plaintiff's copyrights in the Subject Compositions in violation of the Copyright Act.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that judgment be entered against Defendants, jointly and severally, as follows:

1. A declaration that Defendants have infringed Plaintiffs' copyrights in the Subject Compositions in violation of the Copyright Act;
2. A declaration that each of Defendants' infringements was willful;
3. At Plaintiffs' election, an award of Plaintiffs' actual damages, including Defendants' profits, or a separate award of statutory damages in amounts to be determined by the jury for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally;
4. A permanent injunction barring the Defendants from continued infringement of Plaintiffs' copyrights in the Subject Compositions pursuant to 17 U.S.C. § 502; and

1 5. Reasonable attorneys' fees and costs of this action, statutory pre-
2 judgment interest, and such other relief as this Court may deem just and
3 proper.

4 Dated: New York, New York
5 April 16, 2020

6 Respectfully submitted,

7
8 By: s/ Philip P. Mann

9 Philip P. Mann, WSBA No: 28860

10 MANN LAW GROUP PLLC

11 1420 Fifth Avenue, Suite 2200

12 Seattle, Washington 98101

13 Phone: (206) 436-0900

14 Fax: (866) 341-5140

15 E-mail: phil@mannlawgroup.com

16 Matthew F. Schwartz (*Pro Hac Vice Pending*)

17 SCHWARTZ, PONTERIO & LEVENSON, PLLC

18 134 West 29th Street, Suite 1001

19 New York, New York 10001

20 Phone: (212) 714-1200

21 E-mail: mschwartz@splaw.us

22 *Attorneys for Plaintiffs*

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Local Civil Rule 38, and otherwise, Plaintiffs respectfully demand a trial by jury on all issues so triable.

DATED: April 16, 2020

Respectfully submitted,

By: s/ Philip P. Mann

Philip P. Mann, WSBA No: 28860

MANN LAW GROUP PLLC

1420 Fifth Avenue, Suite 2200

Seattle, Washington 98101

Phone: (206) 436-0900

Fax: (866) 341-5140

E-mail: phil@mannlawgroup.com

Matthew F. Schwartz (*Pro Hac Vice Pending*)

SCHWARTZ, PONTERIO & LEVENSON, PLLC

134 West 29th Street, Suite 1001

New York, New York 10001

Phone: (212) 714-1200

E-mail: mschwartz@splaw.us

Attorneys for Plaintiffs